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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,892	11/17/2000	K. Scott Bower	10005277-1	6908

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EXAMINER

QUILLEN, ALLEN E

ART UNIT	PAPER NUMBER
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2676

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/715,892

Applicant(s)

BOWER ET AL.

Examiner

Allen E. Quillen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefore..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1 - 18 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-15 of copending Application No. 09/715253. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

3. Claims 1-18 are directed to the same invention as that of claims 1-15 of commonly assigned Application No. 09/715253. The issue of priority under 35 U.S.C. 102(g) and possibly 35 U.S.C. 102(f) of this single invention must be resolved.

Since the U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302), the assignee is required to state which entity is the prior inventor of the conflicting subject matter. A terminal disclaimer has no effect in this situation since the basis for refusing more than one patent is priority of invention under 35 U.S.C. 102(f) or (g) and not an extension of monopoly.

Failure to comply with this requirement will result in a holding of abandonment of this application.

4. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-18 are provisionally rejected under 35 U.S.C. 102(e) as being anticipated by copending Application No. 09/715253 which has common inventors with the instant application.

Based upon the earlier effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e), if patented. This provisional rejection under 35 U.S.C. 102(e) is based upon a presumption of future patenting of the copending application.

This provisional rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

This rejection may not be overcome by the filing of a terminal disclaimer. See *In re Bartfeld*, 925 F.2d 1450, 17 USPQ2d 1885 (Fed. Cir. 1991).

5. Claim 15 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 09/715,253. Although the conflicting claims are not identical, they are not patentably distinct from each other because examiner takes exception to the fact that implementation of the invention requires both hardware and software in computer readable media in order to function.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-15 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by MacInnis, et al, U.S. Patent 6,501,480.

7. Regarding claim 1, representative of claims 10 and 14, MacInnis discloses a device for producing a composite (Column 3, line 51) digital video data stream (Figure 1, Column 1, lines 50-53) containing pixel data (Column 5, lines 2, 5, 31) corresponding to an image to be rendered (Figures 1-5, Column 11, lines 16-20), the composite digital video data stream being formed from multiple digital video data streams (Column 3, lines 39-41, Column 4, lines 1-16; Column 6, lines 30-45), each of the multiple digital video data streams being provided by a graphics pipeline (Figure 4, Column 6, lines 19-21), each graphics pipeline being configured to process pixel data corresponding to at least a portion of the image to be rendered, said device comprising: an input mechanism configured to receive the multiple digital video data streams from the graphics pipelines, provide a frame of data corresponding to the image to be rendered, and insert pixel data from the multiple digital video data streams into said frame of data such

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that, in response to receiving a first of the multiple digital video data streams, said input mechanism provides said frame of data and inserts the pixel data from the first of the multiple digital video data streams into a corresponding portion of said frame of data to form at least a portion of the composite digital video data stream (Figure 5, Column 9, line 5 through Column 11, line 7; Column 43, lines 62 through Column 47, line 45; Column 8, line 61 through Column 9, line 4).

8. Regarding claim 2, MacInnis discloses the device of claim 1, wherein said input mechanism has a first compositing element and a second compositing element, said first compositing element being configured to provide said frame of data corresponding to the image to be rendered in response to receiving pixel data corresponding to the first of the multiple digital video data streams, said first compositing element being further configured to insert the pixel data corresponding to the first of the multiple digital video data streams into said corresponding portion of said frame of data to form a first compositing digital video data stream, said second compositing element being configured to receive pixel data corresponding to the second of the multiple digital video data streams and said first compositing digital video data stream, said second compositing element being further configured to combine the pixel data corresponding to the second of the multiple digital video data streams and said first compositing digital video data stream to form a second compositing digital video data stream (Figure 4, element 108, video compositor block with three inputs: graphics display, video display and passthrough video, Column 8, lines 61-63).

9. Regarding claim 3, representative of claims 11 and 16, MacInnis discloses the device of claim 1, wherein the multiple digital video data streams simultaneously (Column 4, lines 34-36) provide pixel data to said input mechanism, the first of the multiple digital video data streams containing three-dimensional (Column 5, line 53) pixel data corresponding to the image to be rendered, the second of the multiple digital video data streams containing two-dimensional (Column 11, lines 60 through Column 12, line 14) pixel data corresponding to the image to be rendered, and wherein said input mechanism is configured to combine said two-dimensional pixel data and said three-dimensional pixel data by replacing at least a portion of the pixel data provided by the second of the multiple digital video data streams with at least a portion of the pixel data provided by the first of the multiple digital video data streams (Column 57, lines 3, 6, 15, 17).

10. Regarding claim 4, representative of claims 12 and 17, MacInnis discloses the device of claim 1, further comprising: a controller electrically communicating with said input mechanism (Figures 2 - 4, Column 4, line 1 through Column 6, line 20) said controller being configured to provide a first control signal to said input mechanism, said first control signal containing information regarding which portion of said frame of data corresponds to the pixel data provided from the first of the multiple digital video data streams such that, in response to receiving said first control signal and the pixel data from the first of the multiple digital video data streams, said input mechanism inserts the pixel data from the first of the multiple digital video data streams into said corresponding portion of said frame of data to form at least a portion of the composite digital video data stream (Column 4, lines 51-67) .

11. Regarding claim 5, representative of claim 13 and 18, MacInnis discloses the device of claim 1, further comprising: an output mechanism electrically communicating with said input mechanism, said output mechanism being configured to receive the composite digital video data stream and provide an output composite video data stream, said output composite video data stream being selectively configurable as any one of an analog video data stream, an analog stereo video data stream, a digital video data stream, and a digital stereo video data stream (Figures 1-3, Column 1, lines 39-55; Column 4, lines 1-29).

12. Regarding claim 6, representative of claim 8, MacInnis discloses the device of claim 2, wherein said controller is configured to provide a second control signal to said input mechanism, said second control signal corresponding to one of multiple compositing modes (Column 4, lines 34-39), a first of said compositing modes corresponding to each of the graphics pipelines providing pixel data associated with an entire frame of the image to be rendered, the pixel data of each of the graphics pipelines including a coordinate value offset (Column 11, lines 9-20; Column 12, line 11; Column 13, lines 65; Column 14, line 51) with respect to pixel data of others of the graphics pipelines, said input mechanism being configured to combine the pixel data from the multiple digital video data streams so as to blend color values associated with corresponding coordinate values (Column 30, line 54-55).

13. Regarding claim 7, MacInnis discloses the device of claim 2, wherein said controller is configured to provide a second control signal to said input mechanism, said second control signal

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corresponding to one of multiple compositing modes, a first of said compositing modes corresponding to each of the graphics pipelines providing pixel data associated with a portion of the image to be rendered, the pixel data of each of the graphics pipelines being super sampled, said input mechanism being configured to average, with a selected weighting, the super-sampled pixel data (see above; Column 30, lines 32 through Column 31, line 36; through line 43, antialiased text and graphics).

14. Regarding claim 9, MacInnis discloses the device of claim 5, wherein said output mechanism has a first left channel frame buffer, a second left channel frame buffer, a first right channel frame buffer, and a second right channel frame buffer, said output mechanism being selectively configured to provide said passive digital stereo video data stream by receiving said composite digital video data stream, allocating pixel data from said composite digital video data stream to said first left channel frame buffer, said second left channel frame buffer, said first right channel frame buffer, and said second right channel frame buffer, and simultaneously outputting pixel data from one of said left channel frame buffers and one of said right channel frame buffers (Figures 2-5, elements 52, 59, 60, 184, 186; Figure 14, Column 25, line 62 through Column 30, line 31).

15. Regarding claim 15, MacInnis discloses the device of claim 14, wherein said logic configured to receive the multiple digital video data streams, said logic configured to provide a frame of data, and said logic configured to insert pixel data are embodied in a computer readable medium (see above; Column 51, line 39).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen E. Quillen whose telephone number is (703) 605-4584. The examiner can normally be reached on Tuesday – Friday, 8:30am – noon and 1:00 - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew C. Bella, can be reached on (703) 308-6829.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or FAX'd to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Sixth Floor (Receptionist), Arlington, Virginia

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number (703) 305-9600 or (703) 305-3800.

Allen E. Quillen  
Patent Examiner  
Art Unit 2676

February 8, 2003



**MATTHEW C. BELLA  
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